

Legislative Analysis



OVERSEAS VOTERS: ABSENT BALLOT DEADLINES AND BALLOTS BY ELECTRONIC MAIL

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House Bill 5279 as passed by the House
Sponsor: Rep. Vincent Gregory

House Bill 5530 as passed by the House
Sponsor: Rep. Jennifer Haase
Committee: Ethics and Elections

Second Analysis (2-1-10)

BRIEF SUMMARY: The bills would allow overseas voters to be sent their absent voter ballots by electronic mail beginning with the August 3, 2010 election, and standardize, at 45 days before any election, the deadline by which local clerks must have absentee ballots on hand.

FISCAL IMPACT: The bills would have an indeterminate, but likely negligible, fiscal impact on the Secretary of State. Any fiscal impact would be associated with administrative costs in the promulgation of rules and procedures for electronic mail absentee ballots for members of the armed services or overseas voters, or for processing costs due to the revision of deadlines under the bill.

THE APPARENT PROBLEM:

Under the Uniformed and Overseas Citizens Absentee Voting Act, passed by the U. S. Congress in 1986, an estimated 6 million military and overseas civilian voters have the right to cast absentee ballots in America's federal elections.

However, many overseas voters face procedural hurdles and tight deadlines when they cast their ballots. According to the PEW Center on the States and the federal Election Assistance Commission, an estimated one million ballots were distributed for the 2006 election, yet only one-third were cast or counted. See Background Information. Committee testimony compared the percentages of civilians and military personnel who participated: "Across the board, voter participation among military personnel is starkly lower than the participation rates for their civilian counterparts. In part, this is due to the fact that the voting process they are forced to navigate is overly complex and subject to substantial mail delays. As a result, only 22 percent of citizens serving abroad in the military voted in 2006, as compared to roughly 40 percent of the general population."

In 2004, the PEW "No Time to Vote Report" states that fully 30 percent of overseas military personnel reported that their ballots arrived late, or not at all. Another 28 percent said they did not know how to get a ballot, found the process too complicated, or were unable to register.

In total, 25 states and the District of Columbia need to improve their absentee voting process for overseas military voters. Most do not provide enough time to return the ballot. When a state's process relies entirely or partially on mail delivery, military voters need more time to complete all the steps required, and are less likely to have time to vote.

According to the Michigan Bureau of Elections, the voting process in Michigan takes 45 days. However, state law does not require that local clerks have absent ballots on hand 45 days before every election. For some elections, including all local elections, only 22 days are required. The Heritage Foundation's report "America's Military Voters: Re-enfranchising the Disenfranchised" has found that "based on surveys of the U.S. Postal Service and of military postal authorities, ballots should be mailed to overseas addresses at least 45 days prior to an election in order to ensure adequate time for a ballot to reach a voter and be returned."

A bill has been introduced to standardize, at 45 days before any election, the deadline by which local clerks must have absentee ballots on hand. A second bill would allow overseas absent voters from Michigan to receive their blank absentee ballots by electronic mail. That way, overseas voters can vote their ballot, and return it by mail in half the time.

THE CONTENT OF THE BILLS:

The bills would allow overseas voters to be sent their absent voter ballots by electronic mail, and standardize, at 45 days before any election, the deadline by which local clerks must have absentee ballots on hand. A more detailed description of each bill follows.

House Bill 5279 (H-3) would amend the Michigan Election Law (MCL 168.759a) to allow overseas voters to be sent their absent voter ballots by electronic mail. The bill specifies it would apply to the August 3, 2010 election and to each succeeding election conducted in Michigan. The bill would take effect June 1, 2010.

Generally, the bill modifies all references to members of the armed services to say "an absent uniformed services voter." For example, the bill specifies that "an absent uniformed services voter" (rather than a member of the armed services) or an overseas voter who is not registered but who is eligible to register can apply for registration by using the federal postcard application. Further, the bill eliminates a list of the unregistered but qualified electors, most of who reside overseas. (The eliminated list comprises the following people: a civilian employee of the armed services outside of the United States; a member of the armed services outside of the United States; a citizen of the United States temporarily residing outside the territorial limits of the United States; and a citizen of the United States residing in the District of Columbia.)

House Bill 5279 (H-3) then requires that, upon the request of an absent uniformed services voter or an overseas voter, the clerk of a county, city, township, or village electronically submit a blank voter registration application or blank absent voter ballot application to the voter. Further, the clerk of a county, city, township, or village would

be required to accept a completed voter registration application or completed absent voter ballot application electronically transmitted by an absent uniformed services voter or overseas voter. Finally the bill would require that a voter registration application or absent voter ballot application submitted by an absent uniformed services voter or overseas voter contain the voter's signature.

House Bill 5279 (H-3) specifies that a spouse or dependent of an overseas voter who is a U.S. citizen accompanying the overseas voter overseas may apply for an absent voter ballot, even though the spouse or dependent is not a qualified elector of a city or township of Michigan.

Under the bill, an absent uniformed services voter or an overseas voter, whether or not registered to vote, can apply for an absent voter ballot. Upon receipt of an application for an absent voter ballot, a county, city, village or township clerk would be required to forward the absent voter ballot request, the forms necessary for registration, and the instructions for completing the forms. If a federal postcard application were filed, then the clerk would have to accept the federal postcard application as the registration application (and would not send any additional registration forms to the applicant).

House Bill 5279 (H-3) specifies that not later than 45 days before an election, a county, city, township, or village clerk would be required to electronically transmit or mail (as appropriate) an absent voter ballot to each absent uniformed services voter or overseas voter who applied for an absent voter ballot at least 45 days before the election.

Upon the request of an absent uniformed services voter or overseas voter, the clerk would electronically transmit a blank absent voter ballot to the voter. The voter would print the blank absent voter ballot, mark the ballot, and return the ballot to the appropriate clerk by U.S. mail or with another public postal service, express mail service, parcel post service, or common carrier.

The secretary of state would be required to prescribe electronic absent voter ballot formats, and electronic absent voter ballot transmission methods. Each county, city, township, or village clerk would be required to employ the prescribed electronic ballot formats to fulfill an absent voter ballot requests of those who wished to receive their absent voter ballots through an electronic submission. Further, the secretary of state would modify the printed statement provide under Section 761(4) and the absent voter ballot instructions provided under Section 764a in order to accommodate the procedures developed for electronically transmitting an absent voter ballot. A statement would be included in the certificate signed by the absent voter who obtained a ballot electronically that the secrecy of the absent voter ballot could be compromised during the duplication process. Finally, the absent voter ballot instructions provided to an absent uniformed services voter or overseas voter would include the proper procedures for returning the absent voter ballot to the appropriate clerk.

Under the bill, an absent uniformed services voter or an overseas voter who submitted an absent voter ballot application would be eligible to vote in any local or state election

occurring in the calendar year in which the absent voter ballot application was received by the county, city, village, or township clerk, but could not vote in an election for which the application was received by the clerk after 2 p.m. of the Saturday before the election.

A county, city, or township clerk receiving an absent voter ballot application from an absent uniformed services voter or an overseas voter would transmit to a village clerk and the school district election coordinators, where applicable, the necessary information to enable them to forward an absent voter ballot to the absent voter. *A village clerk* receiving an absent voter ballot application from an absent uniformed services voter or overseas voter would be required to transmit to the township clerk and the school district election coordinators the necessary information to enable them to forward an absent voter ballot for each applicable election in that calendar year. If the local elections official rejected a voter registration application or absent voter ballot application submitted by an absent uniformed services voter or overseas voter, then the election official would be required to notify the voter of the rejection.

The bill specifies that an electronic mail address provided by an absent uniformed services voter or overseas voter for the purposes of this section of the code would be confidential and exempt from disclosure under the Freedom of Information Act.

Under the bill, the state director of elections would be required to approve a ballot form and registration procedures for absent uniformed services voters and overseas voters.

The bill defines "overseas voter" to mean any of the following: (1) An absent uniformed services voter who, by reason of active duty or service, is absent from the United States on the date of an election; (2) a person who resides outside of the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or (3) a person who resides outside of the United States and who, but for such residence outside of the United States, would be qualified to vote in the last place in which he or she was domiciled before leaving the United States.

As used in this section of the code, "absent uniformed services voter" is defined to mean any of the following: (1) a member of a uniformed services on active duty who, by reason of being on active duty, is absent from the place of residence where the member is otherwise qualified to vote; (2) a member of the Merchant Marine who, by reason of services in the Merchant Marine, is absent from the place of residence where the member is otherwise qualified to vote; or (3) a spouse or dependent of a member referred to in (1) or (2) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

The bill defines "uniformed services" to mean the Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the Public Health Service, the commissioned corps of the National Oceanic and Atmospheric Administration, a reserve component of a uniformed service, or the Michigan National Guard as defined in Section 105 of the Michigan Military Act.

House Bill 5530 would amend the Michigan Election Law (MCL 168.713 and 168.714) to increase the time prior to an election that absent voter ballots would be available to county clerks.

Currently under the law, the County Board of Election Commissioners must cause all ballots and absent voter ballots to be delivered to the county clerk at least 47 days before both the November general election and the August primary, and 22 days before all other elections. The county clerk, in turn, must deliver the absent voter ballots for each precinct to all the township and city clerks in the county at the earliest possible time, but at least 45 days before both the November general election and the August primary, and at least 20 days before any other election. (All other ballots other than absent voter ballots, as well as election supplies, must be delivered to the local clerks at least 10 days before any election.)

House Bill 5530 would revise these deadlines. The bill would require that the County Board of Election Commissioners cause the delivery of all ballots and absent voter ballots to county clerks at least 47 days before *any* election. Further, the bill would require the county clerks to deliver to the local clerks the absent voter ballots for each precinct at the earliest possible time, but at least 45 days before *all* elections. (All but the absent voter ballots would continue to be delivered to the local clerks at least 10 days before any election.)

In addition, the bill specifies that each city, township, and village clerk must adhere to the deadlines provided in this section of the law, for elections in which the county does not print the ballots.

BACKGROUND INFORMATION:

To review the PEW Center on the States 47-page report, "No Time to Vote: Challenges Facing America's Overseas Military Voters, visit:
http://www.pewcenteronthestates.org/uploadedFiles/NTTV_Report_Web.pdf

ARGUMENTS:

For:

Currently, 32 states allow the electronic transmission of a blank absent voter ballot to their voters residing overseas. Michigan should do the same. According to committee testimony, states that have recently enacted this election reform report great success. In Minnesota, for example (with SF 1218/2008 Enacted Law), participation rates for military voters increased over 400 percent between 2006 and 2008. In addition, the state previously saw 19 percent of its ballots returned, but now sees a response rate of up to 61 percent.

Without electronic transmission of blank absent voter ballots, overseas voters do not have enough time to return their voted ballots to local elections clerks. Following a survey of military postal authorities, the U.S. Election Assistance Commission reports that a

minimum of 45 days is needed to ensure that an overseas voter has enough time to receive and return a ballot by mail. Yet Michigan's Oakland County Clerk estimates that it now takes 57 days for Michigan clerks to verify, mail, and receive a return overseas ballot. For that reason, she and the county clerks in Wayne and Macomb counties have launched "Operation Our Troops Count". This legislation, allowing the electronic transmission of a blank ballot, but requiring that the voted ballot be returned by mail, would cut the ballot transmission time in half, and allow overseas voters to cast their ballots within Michigan's 45-day limit.

POSITIONS:

The Secretary of State supports House Bill 5279 with amendments. (10-14-09)

The Oakland County Clerk supports House Bill 5279 (H-1). (10-21-09)

The Macomb County Clerk supports House Bill 5279. (10-14-09)

The Wayne County Clerk supports House Bill 5279. (10-14-09)

The Oakland County Board of Commissioners supports House Bill 5279. (10-14-09)

The Michigan Association of Municipal Clerks supports House Bill 5279. (10-21-09)

The Michigan Association of County Clerks supports House Bill 5279 in concept, and also supports House Bill 5530. (10-21-09)

The Bloomfield Township Clerk supports House Bill 5279. (10-14-09)

The Macomb County Veterans Department supports House Bill 5279. (10-14-09)

The American Legion, The Marine Corps League, and The Commanders Group support House Bill 5279. (10-14-09)

The Michigan Campaign Finance Network supports House Bill 5279. (10-14-09)

The Michigan Townships Association supports House Bill 5279 in concept, and also supports House Bill 5530. (10-21-09)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.